



**MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

**2008
Annual
Report**

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Introduction

The Missouri Workers' Compensation Law, found in chapter 287 of the Revised Statutes of Missouri,¹ contains the exclusive remedy for employees who sustain injuries or illnesses in the course and scope of employment. Chapter 287 applies to all employers with five or more employees. Construction-industry employers who erect, demolish, alter or repair improvements are subject to the law if they employ one or more employees. Additionally, partners and sole proprietors may individually elect to obtain coverage. Any reference in chapter 287 to an employer includes that employer's workers' compensation insurance carrier or self-insurance group trust.

Under chapter 287, an injured employee may be entitled to medical benefits, temporary total disability benefits (TTD), permanent partial disability benefits (PPD) or permanent total disability benefits (PTD). Chapter 287 gives an employer the right to select a treating physician for its injured employee. Section 287.140 prohibits a hospital, physician or other health care provider from attempting to collect from the employee any costs incurred in treating a work-related injury. Should an employee desire treatment from a health care provider of his/her choosing, the employee may do so at his/her own expense.

All employers subject to the law must insure their workers' compensation obligations or liabilities with an insurance carrier that is authorized to provide such services in the state of Missouri by the Missouri Department of Insurance Financial Institutions and Professional Registration or meet the requirements for self-insurance authority.

The Division of Workers' Compensation (Division) administers the provisions of chapter 287 through its main Jefferson City office and adjudication offices located in Cape Girardeau, Joplin, Kansas City, Springfield, St. Charles, St. Joseph, and St. Louis. Section 287.690 authorizes an administrative tax on employers – not to exceed 2 percent of net deposits, net premiums, or net assessments received – to fund the administrative expenses of the Division.

The following report, presented pursuant to section 287.680, briefly describes each of the Division's programs and summarizes the transactions and proceedings undertaken in 2008.

¹ For ease of reading, the Report refers to the Workers' Compensation Law and its components in informal format. All references, however, are to the Revised Statutes of Missouri, Cum. Supp. 2008 unless otherwise specified.

Program Descriptions

I: INJURY PROCESSING UNIT

A: Duties & Responsibilities:

The Injury Processing Unit plays a pivotal role in the Division as it is the recipient of all filings made by the parties with the Division. The Unit receives and processes hundreds of thousands of documents each year, including first reports of injury (FROI), claims for compensation, answers to those claims for compensation, medical records, and applications for medical fee disputes. The Unit's functions are divided into a claims team, an imaging team, a database management team, a case review team, and an electronic data interchange (EDI) team.

The claims team processes the claim for compensation received by the Division. The imaging team ensures that the documents received are indexed and imaged to the particular case in the Automated Integrated Computer System (AICS). The database management team maintains the electronic database within AICS which stores the addresses for employers, insurance companies, third-party administrators, and attorneys. The case review team processes the answers to the claim, lost-time reports, medical reports and other filings made to the Division for collecting medical and return-to-work information from the insurance carriers or third-party administrators as the case may be, are received.

The EDI team provides oversight of the electronic filing of the FROI and. The Division mandated the electronic filing of the FROI beginning Jan. 1, 2009. Currently, 98 percent of the filers of FROI do so electronically. This process minimizes errors, ensures timeliness in reporting, and reduces costs for the reporting entities and the Division.

B: Injury Processing Unit 2008 Volume:

• First Reports of Injury processed	124,331
• Average time to process the First Reports of Injury	2 days
• Claims for Compensation processed ²	19,383
• Average time to process the Claims for Compensation	6 days
• Answers to Claims for Compensation processed ³	32,026
• Number of Form 2s filed with the Division ⁴	17,510

² Includes claims filed against the Treasurer of the State of Missouri as custodian of the Second Injury Fund

³ Includes answers filed by the employer/insurer and the Missouri Attorney General's Office on behalf of the Treasurer of the State of Missouri

⁴ Form 2 is the Notice of Commencement/Termination of Compensation

II: FRAUD AND NONCOMPLIANCE UNIT

A: Duties and Responsibilities:

The Fraud and Noncompliance Unit investigates allegations of workers' comp fraud and noncompliance perpetrated by a person or entity. Section 287.128 prohibits certain conduct in connection with the workers' compensation process. Such prohibited conduct includes (but is not limited to):

- failure of an employer to insure its workers' compensation liability;
- knowingly filing multiple claims for the same occurrence with intent to defraud;
- knowingly making a false claim for the payment of health care benefit; and
- knowingly making a false or fraudulent material statement for obtaining or denying a benefit.

At the conclusion of the investigation by the fraud and noncompliance unit, the findings are presented to the Division Director who may refer the file to the Missouri Attorney General's Office for possible prosecution.

The records, reports, tapes, photographs, and documentation submitted by any person to the unit is confidential and not subject to Missouri's open records laws, although an exception exists to allow the release of records to a local, state, or federal law enforcement authority.

Any person convicted of knowingly filing a false or fraudulent workers' compensation claim for payment of benefits or any insurance company or self-insurer who knowingly and intentionally refuses to comply with known and legally indisputable obligations with intent to defraud or any person who prepares or provides a false/forged certificate of insurance as proof of coverage, is guilty of a class D felony and may be fined up to \$10,000 or double the value of the fraud, whichever is greater. A person who commits any other violation included in section 287.128 is guilty of a class A misdemeanor and may be fined up to \$10,000 or double the value of the fraud, whichever is greater. Any employer failing to insure its liability is guilty of a class A misdemeanor and may be fined up to three times the annual premium the employer would have paid had such employer been insured or up to \$50,000, whichever is greater. A subsequent instance of noncompliance is a class D felony.

B: Fraud and Noncompliance Unit 2008 Caseload:

• Fraud cases received	365
• Noncompliance cases received	934
• Fraud cases administratively closed	327
• Noncompliance cases administratively closed	678
• Fraud cases referred to the Attorney General's Office	56
• Noncompliance cases referred to the Attorney General's Office	218

C: Case Law

In 2008, Robert Salter was charged with failure to insure his workers' compensation liabilities pursuant to section 287.128.5, a class D felony (Salter had previously pled guilty in 2002 to misdemeanor failure to insure regarding another company with which he was involved). The trial court found Salter guilty, sentenced him to one year imprisonment, and fined him \$5,000. The trial court also imposed a penalty of \$25,000 under Section 287.128. Salter alleged on appeal that the legislation enacting this provision violated Missouri Constitution's single subject rule and clear title requirement. In *State v. Salter*, 250 S.W. 3d 705, 708 (Mo. 2008), the Missouri Supreme Court rejected his claims, holding that the provisions of H.B. 1237 (1998) fairly relate to the bill's title and inform the public and the legislature of the subject matter – workers' compensation. *Id.* at 710. And in affirming the trial court's decision, the Court held that individuals such as Salter could be liable for corporate misconduct – here, the failure to insure the corporation's workers' compensation liability. *Id.*

III: SELF-INSURANCE UNIT

A: Duties and Responsibilities:

The self-insurance unit oversees approximately 39 percent of the workers' compensation insurance market. Many employers take advantage of the option to self-insure their obligations by satisfying the requirements of section 287.280 and 8 CSR 50-3.010. For many employers, self-insuring their liabilities is a cost-effective alternative to purchasing a policy in the market. There are two categories of self-insurance authorized by law: individual and group trust. Missouri has stringent requirements that must be met prior to granting self-insurance authority to an employer. These requirements include meeting standards for financial stability, loss history, safety, and claims handling process. An approved self-insured employer is required to post security in an amount determined by the Unit. In a trust, employers pool their financial resources to distribute the risk.

The Unit's functions consists of reviewing applications, overseeing the existing self-insured entities, conducting claims audits, and administering the proof-of-coverage requirements under the law.

B: Missouri Private Sector Individual Self Insurers Guaranty Corporation and Case Law:

An individual private sector self-insured employer is required to be a member of the Missouri Private Sector Individual Self-Insurers Guaranty Corporation (Guaranty Corporation). The Guaranty Corporation, created on Aug. 28, 1992, administers and defends the covered claims of an insolvent or bankrupt self-insured member employer. The Guaranty Corporation performs its functions under a plan of operation and exercises its powers and duties through a board of directors. The Division Director is a permanent member of the board. The powers and duties of the Division and of the board are set forth in sections 287.865 and 287.872. The Guaranty Corporation was created to ensure that injured workers received the benefits to which they were entitled when an individual private sector member employer becomes insolvent. The Guaranty Corporation manages an insolvency fund whose purpose is to meet the obligations

insolvent members incurred after exhaustion of all assets such as bonds, escrow deposits, insurance or reinsurance under the law.

In *Andrews v. Havens Erectors, Inc.* 267 S.W.3d 716, (Mo.App. W.D. 2008) *application for transfer denied*, No. SC89658 (Mo. Nov. 25, 2008), the Missouri Court of Appeals issued an Order affirming the trial court's judgment in a declaratory action filed by the widow of an injured worker, Andrews, against the Guaranty Corporation. The trial court determined that a surety bond in the sum of \$200,000 posted by Havens Erectors (self-insured employer) with the Division was intended to cover claimants or dependents such as Mrs. Andrews, whose claim arose prior to the creation of the Guaranty Corporation on Aug. 28, 1992. The Missouri Court of Appeals agreed. The Court of Appeals also denied the Guaranty Corporation's cross claim against the Division for indemnification and contribution. The Guaranty Corporation stated that the \$50,000 initially set aside to be applied retroactively for payment of benefits owed to employees who had open, outstanding claims, has been exhausted.

The Missouri Court of Appeals has examined the necessity of filing a proof of claim by an injured employee in a court having jurisdiction over the bankruptcy or insolvency of an individual self-insured member employer. In *Meadows v. Havens Erectors, Inc.* 238 S.W. 3d 210 (Mo.App. W.D. 2007), the question to be decided was whether an injured employee's failure to file a proof of claim in the bankruptcy court pursuant to section 287.865.5 divests the Labor and Industrial Relations Commission's (LIRC) jurisdiction over the workers' compensation case. The Western District Court of Appeals held that as Havens Erectors was not subject to a bankruptcy proceeding, the requirement to file a proof of claim had no effective purpose as there would not be any recovery from the debtor that could offset the Guaranty Corporation's obligation to pay the claim. The Court stated:

Therefore, no court has jurisdiction over any delinquency or bankruptcy proceeding in which an injured employee of Erectors can file a proof of claim. Therefore, the statutory predicate of a proof of claim is inapplicable. Meadows, an injured employee of Havens Erectors, may recover against the Guaranty Corporation's Insolvency Fund on his workers' compensation claims without first filing a proof of claim. Accordingly, the Commission had jurisdiction to enter the award. *Id.* at 215.

In *Jones v. GST Steel Co.*, 2009 WL 20997 (Mo.App. W.D.), the Missouri Court of Appeals reversed the LIRC's decision and remanded the case to the Commission to reinstate the award entered by the administrative law judge (ALJ). The issue before the Court was whether Jones' claim for compensation was barred because he failed to file a proof of claim with the bankruptcy court. Jones sustained occupational deafness while employed at GST until it closed its operation in May 2001. *Id.* at 4. Jones was precluded from filing a claim for compensation for hearing loss until six months after his separation from employment, so he was unable to file his claim until after Nov. 15, 2001, three months after the close of the bankruptcy claim period. *Id.* The court stated that the specific provisions relating to filing hearing loss claims trumped the requirements set forth in section 287.865.5 relating to filing a proof of claim in the bankruptcy estate of an insolvent employer. *Id.* at 6.

C: Self-Insured Unit 2008 Volume:

- Number of individual self insured employers 319
- Number of insured group trusts 26
- Number of individual member employers included in group trusts 3,022

IV: DISPUTE MANAGEMENT UNIT

A: Duties and Responsibilities:

The Dispute Management Program offers to mediate disputes that arise soon after a workplace injury occurs. The Division has one mediator who assists parties in resolving medical treatment and lost wage disputes. This is a voluntary process. When one of the parties does not agree to mediate, the party originally requesting mediation services is advised that he or she may take further steps if the problem persists, including requesting a docket setting with an administrative law judge (ALJ). The Dispute Management Unit does not provide voluntary mediation services if a formal Claim for Compensation has been filed with the Division as the filing of a claim initiates a contested case proceeding.

The Division is required to maintain a public information program that provides assistance to all parties governed by the Missouri Workers' Compensation Law. The Division maintains toll-free numbers for employers and injured employees to call in with questions related to the Workers' Compensation Law. The Unit employs three information specialists to respond to calls received on both the employee and employer toll-free lines.

B: Dispute Management Unit 2008 Workload:

- Referrals for voluntary dispute management assistance 549
- Calls received on the employee toll-free line 17,245
- Calls received on the employer toll-free line 2,007

V: SECOND INJURY FUND UNIT

A: Overview:

The Second Injury Fund (SIF) was created in 1943 to encourage employment by permitting persons to be employed without exposing employers to any liability for previous disabilities. The SIF helps employers by limiting their liability to only the current work-related injury.

When an employee sustains a compensable work injury, liability for that injury rests with the employer. But if the effects of that injury combine with previous qualifying disability to create additional disability, the injured employee can receive additional money from the SIF.

The SIF is financed by a surcharge on employers' workers' compensation premiums and equivalent premiums for self-insured employers. SBs 1 & 130 (2005) capped the surcharge rate at 3 percent. The surcharge also may be reduced or suspended when the balance in the SIF exceeds a certain amount.

The Missouri State Treasurer's Office is the custodian of the SIF. The Missouri Attorney General's Office defends the claims made against the SIF.

There are essentially five categories into which the benefits provided by the SIF may be placed. As required by section 287.713, expenditures from the SIF for 2008 are provided here.⁵

1. Disability Benefits.

a. Permanent Partial Disability (PPD). To qualify for PPD benefits, an employee must have a pre-existing permanent disability combining with the work injury to create greater disability than the simple sum of the two disabilities. In order for an employee to recover from the SIF, minimum threshold limits regarding both the pre-existing and work-related disability must be met. The employee must have disability that exceeds 50 weeks of the body as a whole, or 15 percent of a major extremity.

2008 PPD expenditures: \$15,654,806.05

b. Permanent Total Disability (PTD). If the last work-related injury by itself renders the injured worker permanently and totally disabled, the SIF has no liability. But SIF liability does exist when the last work-related injury combines with prior disability to cause permanent and total disability. The employer is liable only for the effect of the last work-related injury and the SIF pays the remaining lifetime benefits.

2008 PTD expenditures: \$51,200,170.42

2. Death Benefit. The SIF makes payments in cases involving the death of an employee while working for an uninsured employer. Burial expenses and death benefits in the form of weekly payments to the surviving spouse or dependents of the deceased are paid from the SIF. Benefits may be administered by a lump-sum settlement or ongoing weekly payments to dependents.

2008 Death benefit expenditures: \$272,881.90

3. Rehabilitation Benefits. These benefits are to restore the seriously injured to a condition of self-support and self-maintenance through rehabilitation. Serious injuries that may qualify for rehabilitation include: quadriplegia, paraplegia, amputation of the hand, arm, foot or leg, atrophy due to nerve injury or non-use, and back injuries not amenable alone, to recognized medical and surgical procedures.

⁵ Section 287.713 requires reporting of expenditures for "each of the four categories of liability." Here we present expenditures for all categories of SIF liability that currently exist, including separate numbers for PPD and PTD benefits.

Upon order of the Division of Workers' Compensation Director, the employee will receive \$40 per week for up to 20 weeks only for the period the employee actually attends physical rehabilitation. Although unusual, this may be extended by special order of the Division of Workers' Compensation for up to 20 additional weeks for a maximum of 40 weeks. The injured worker only receives the benefit from the SIF if he/she attends therapy as ordered by the physician at a facility that is certified by the Division.

2008 Rehabilitation expenditures: \$69,394.31

4. Indemnity (for lost wages from a second job). If an employee is unable to work at a second job as a result of a work-related injury at his/her "first" job, the SIF provides benefits. These benefits are only available for injuries suffered after Aug. 28, 1998.

2008 Indemnity expenditures: \$212,551.42

5. Medical expenses for injured employees of uninsured employers. If an employee is injured while working for an employer who has not insured its workers' compensation liabilities, the SIF is responsible for payment of the employees' medical bills. In such cases, the Division refers the matter to the Attorney General's Office for appropriate actions to be taken against the uninsured employer.

2008 Uninsured medical expenditures: \$1,330,672.97

Total SIF 2008 benefits expenditures: \$68,740,477.07

B: The Division's duties and responsibilities regarding the SIF:

- The Division is responsible for calculating the annual surcharge percentage to be imposed upon each workers' compensation policyholder and every authorized self insurer, by Oct. 31, for the subsequent calendar year. Section 287.715.
- The Division is responsible for collecting the surcharge amounts that are paid quarterly by insurers and self-insurers including group trusts.
- The Division requisitions from Office of Administration the warrants on the state treasurer for the payment of compensation and benefits out of the Second Injury Fund to the claimants, consistent with an award or settlement approved by the administrative law judge (ALJ). Section 287.220.1.
- Through its eight adjudication offices, the Division provides a mechanism for resolving the Claims for Compensation filed against the Treasurer of the State of Missouri as custodian of the SIF. Sections 287.220, 287.390 and 287.610, RSMo.
- The Division is required to maintain the financial data and records concerning the second injury for the support of the Division and the SIF. Section 287.220.7.
- The Division Director refers cases of fraud and noncompliance regarding the SIF investigated by the Division to the Attorney General's Office for prosecution. Section 287.128.
- The Division processes all Claims for Compensation that are filed against the Treasurer of the State of Missouri as custodian of SIF. Sections 287.220 and

287.430. The Division processes all Answers to the Claim and mails the docket notices to all parties to the case.

- The Division Director requisitions the payments to be made from the SIF to the employee in cases involving “serious injury” after the employee receives physical rehabilitation from a facility certified by the Division. Section 287.141.
- Every three years an actuarial study is conducted to determine the solvency of the SIF with the expenses paid out of the workers’ compensation administrative fund. Section 287.220.6.
- The Department’s financial staff performs accounting and auditing functions.

C: Vocational Rehabilitation: The Division coordinates its responsibilities with the Missouri Department of Elementary and Secondary Education.

D: Actuarial Opinion from Pricewaterhouse Coopers (PwC):

In 2008, PwC performed the actuarial analysis required by section 287.220.6. The PwC report has previously been provided to the governor and members of the General Assembly.

E: Case law and legislation:

On Jan. 9, 2007, the Missouri Supreme Court held that the dependents of an injured employee who dies from causes unrelated to the injury are entitled to that employee’s PTD benefits. *Schoemehl v. Treasurer of State*, 217 S.W. 3d 900 (Mo. 2007). After analyzing sections 287.230.2, 287.200.1 and 287.020.1, the Court held that as her husband’s dependent Mrs. Schoemehl is considered an “employee” and is entitled to stand in the place of her husband for purposes of receiving PTD benefits.

HB 1883 (2008) rejected and abrogated the Court’s holding in *Schoemehl* and clarified that the surviving dependent(s) of the employee is not entitled to receive the unpaid unaccrued PTD benefits. All rights to unaccrued compensation for PTD shall cease upon the death of the injured employee. Unpaid unaccrued compensation for PPD will continue to be paid to dependents.

In *Strait v. Treasurer of State*, 257 S.W.3d 600, 602-603 (Mo. banc 2008), the Missouri Supreme Court held that the interpretation of the Workers’ Compensation Law that was made in the *Schoemehl* case applies to cases that are pending in the Labor and Industrial Relations Commission or pending on appeal at the time of the *Schoemehl* decision. Accordingly, the Commission had jurisdiction to amend its final award of PTD benefits to substitute the dependent children as claimants after their mother died while the mother’s claim was pending. *Id.* at 601.

In *Bennett v. Treasurer of State*, 2008 WL 4906020 (Mo.App. W.D.), the Missouri Court of Appeals reiterated that the *Schoemehl* case’s applicability is restricted to claims for PTD benefits that are pending between Jan. 9, 2007, the date the Supreme Court issued its opinion in the *Schoemehl* case and June 26, 2008, the effective date of HB 1883.

VI: ADJUDICATION

The Division's statutory responsibility to adjudicate and resolve disputes under the law is fulfilled by the eight adjudication offices throughout the state of Missouri. The administrative law judges (ALJs), court reporters, docket clerks, and assistants provide the services to the parties to the case who appear at the scheduled docket settings in each respective office. The Division has streamlined the rendition of services by standardizing several forms that the parties utilize to request a docket setting. The Division offers various docket settings, such as voluntary settlement conference; prehearing; mediation; section 287.203 hearing (to contest termination of compensation), hardship hearing; hearing upon final award; and notice to show cause or dismissal settings. The various docket settings are briefly summarized below. The Division also schedules evidentiary hearings on medical fee disputes, crime victims' compensation cases, and tort victims' compensation cases.

A case is set for a **voluntary settlement conference** before an administrative law judge (ALJ) after the employer/insurer has filed a First Report of Injury (FROI) with the Division, or after the employee has initiated a case through the Dispute Management Unit. A voluntary settlement conference may be set by written request of a party by completing a Division-approved form, or it may be set at the discretion of the Division.

A **pre-hearing** is a proceeding before an administrative law judge (ALJ) to discuss issues in a case in which a claim for compensation has been filed. A pre-hearing may be requested when:

- The parties want to present a settlement agreement for approval;
- Disputes or other issues arise that must be resolved in order for the case to proceed; or
- The parties have a good-faith belief that a brief meeting with an administrative law judge (ALJ) will help in moving the case more expeditiously to settlement or final hearing.

A **mediation** is a setting in which the parties and their attorneys, if they are represented, meet with an administrative law judge (ALJ) to discuss issues in a confidential manner, identify areas of agreement and facilitate a compromise settlement of a claim to avoid proceeding to a hearing. A mediation may be set upon the written request of a party, provided that an administrative law judge (ALJ) finds that the issues have been sufficiently developed to make the mediation meaningful. It is the intent of the Division to conduct a mediation before the parties incur the expense of any expert medical depositions.

A **hardship hearing** is an evidentiary hearing held before an administrative law judge (ALJ) when the employee alleges that he or she is not at maximum medical improvement, is in need of medical treatment, or entitled to temporary total disability (TTD) benefits, and the employer is not providing such treatment or benefits. The hearing may alternatively be based on the termination of benefits under section 287.203. A hardship hearing is a hearing in which the employee is requesting the issuance of a temporary or partial award. A temporary or partial award addresses issues of medical treatment and payment of temporary disability benefits. If a party requests the issuance of a final award and makes it an issue at the hearing, and the evidence presented so merits, a final award may be issued.

A **hearing requesting issuance of a final award** is an evidentiary hearing held before an administrative law judge (ALJ). Evidence may be offered, testimony may be taken, and a verbatim record made for the reviewing tribunal. A final hearing may be requested when the employee has reached maximum medical improvement or the case is otherwise ready for final resolution.

All parties must appear at the hearing at the date, time, and place set and be ready to proceed with the presentation of evidence on all issues. An administrative law judge (ALJ) may grant a continuance of the final hearing only upon a showing of good cause or by consent of the parties. A continuance will generally not be granted for conflicts after the attorney has cleared the hearing date in advance.

The administrative law judge (ALJ) shall issue an award, including findings of facts and rulings of law, within 90 days of the last day of the hearing. For all other hearings (except hearings on the medical fee disputes reasonableness cases) an administrative law judge (ALJ) shall issue a written award within 90 days of the last day of the hearing. The hearing shall be concluded within 30 days of the commencement of the hearing, except in extraordinary circumstances where a lengthy trial or complex issues necessitates a hearing length in excess of 90 days.

If the administrative law judge (ALJ) determines that any proceedings have been brought, prosecuted or defended without reasonable grounds, the administrative law judge (ALJ) may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them. The administrative law judge (ALJ) shall not issue a written award if the case is settled or dismissed after a hearing and before the award is issued.

Compromise settlements between the parties must be approved by an administrative law judge (ALJ) in order to be valid. An administrative law judge (ALJ) will approve a settlement agreement pursuant to section 287.390 as valid and enforceable as long as:

- The settlement is not the result of undue influence or fraud;
- The employee fully understands his or her rights and benefits;
- The employee voluntarily agrees to accept the terms of the agreement; and
- The settlement is in accordance with the rights of the parties.

All stipulations for compromise settlement submitted for approval must be accompanied by copies of all available medical rating reports, surgical notes, and radiological reports, or progress notes showing a diagnosis, or statement from the employer/insurer's attorney indicating that the injury is of such a minor nature that no medical report is necessary. Stipulations for compromise settlement in an acceptable format may be presented for approval by mail or in person.

An order of **default judgment or dismissal** may be issued in the following circumstances:

- Default Hearings and Awards – A case may be set for default judgment upon the request of the employee if the employer/insurer has failed to appear and/or defend the claim.
- Dismissal for Failure to Prosecute – Cases in which no party has requested a setting in one year will automatically be set on a dismissal docket. The claim for compensation may be dismissed for failure to prosecute if after notice to the parties, the claimant or the claimant’s attorney fails to show good cause as to why the claim should not be dismissed.
- Voluntary Dismissals - A claim for compensation may be voluntarily dismissed by the employee as to any party, or the case as a whole.

Adjudications 2008:

• Conferences held	12,310
• Prehearings held	41,811
• Mediations held	21,202
• Hearings held	837
• Awards issued	9536
• Orders of Dismissal issued	10,870
• Settlements approved	27,729

Case Law:

In *State ex rel. Carter v. City of Independence*, 2008 WL 4701027 (Mo.App. W.D.), the Missouri Court of Appeals, in a case of first impression, held that an administrative law judge (ALJ) has the authority to compel a claimant to submit to an evaluation by a vocational rehabilitation expert selected by an employer. The court held that the 2005 amendment to section 287.143 made by SB1 and 130 was procedural in nature and applied retroactively to claimant’s workers’ compensation case.

VII: LEGAL UNIT

A: Duties and Responsibilities:

The Legal Unit provides legal advice and assistance to the Division Director and the various units and programs within the Division. The legal unit also oversees the Religious Exception Program and the Medical Fee Dispute Program. In addition to other general duties, the unit also drafts proposed rules and amendments to the existing regulations.

The Religious Exception Program grants workers’ compensation exceptions to employers and employees who are members of a recognized religious sect or division (as defined by federal

⁶ Includes awards relating to crime victims’ compensation cases, medical fee disputes, hardship hearings, and second injury fund only cases.

law) who are conscientiously opposed to acceptance of benefits of any public or private insurance in various contexts.

The Medical Fee Dispute Program allows health care providers to assert claims for payment for treatment provided to injured employees. There are two types of medical fee disputes: direct pay and additional reimbursement (reasonableness).

B: Legal Unit 2008 Workload

• Subpoenas received	236
• Child support liens processed	26
• Sunshine requests responded to	20
• Applications for direct payment filed	560
• Applications for additional reimbursement filed	965
• Administrative rulings issued	39
• Religious exception applications filed	83
• Religious exceptions granted to employees	77
• Religious Exceptions granted to employers	16

VIII: TORT VICTIMS' COMPENSATION FUND

The Missouri Tort Victims' Compensation Fund (the Fund) was established by legislation passed in 1987. Revenue into the Fund is generated by a portion of money paid as punitive damages in civil lawsuits in Missouri. In 2001, the Missouri General Assembly enacted legislation authorizing claims to be made against the Fund, giving the Division of Workers' Compensation the duty to evaluate those claims, and set up criteria for the evaluation of those claims.

The purpose of the Fund is to help compensate people who have been injured due to the negligence or recklessness of another (such as in a motor vehicle collision or a hunting accident), and who have been unable to obtain full compensation because the party at fault (the "tortfeasor") had no insurance, or inadequate insurance, or has filed for bankruptcy, or for other reasons specified in the law.

There were 30 claims filed during the 2007 Annual Claims Period. These were reviewed in the same manner as during the Initial Claims Period. Administrative Determinations were issued in all 30 cases on Oct. 15, 2008. Twenty-five of the claims were successful. There was one appeal, which is still pending. The value of individual claims ranged from \$20,000.00 to \$300,000.00, and the aggregated total was \$4,537,525.52.

There were 24 claims filed during the 2008 Annual Claims Period. The review process will begin in January 2009. On Dec. 29, 2008, the balance in the Fund was slightly more than \$53,000.00. On Dec. 30, 2008, the Fund received a check for \$3.13 million, raising the balance in the Fund to \$3.19 million.

IX: CRIME VICTIMS' COMPENSATION FUND

Effective Aug. 28, 2007, the Missouri Crime Victims' Compensation Fund was transferred from the Division of Workers' Compensation to the Missouri Department of Public Safety. However, the Division's administrative law judges (ALJs) have the statutory authority to hold hearings de novo upon a petition filed by a party aggrieved by the decision of the Department of Public Safety. The administrative law judge (ALJ) may affirm, reverse or set aside the decision of the Department. The administrative law judge's (ALJ) decision may be appealed to the Labor and Industrial Relations Commission. In 2008, there were 74 such cases set on the docket, and 42 hearings held.

Division's 2008 Accomplishments and Initiatives

1) On-line Filing of Second Injury Fund (SIF) Surcharge Quarterly Report Forms

The Division is implementing a new billing and on-line reporting system for the SIF Surcharge. This new system allows commercial insurance companies, group trusts, and individual self-insured entities to receive and file the report forms directly with the Division using a Web-enabled process.

This new system also allows for most of the Division's communication to be in electronic format, which increases efficiency and saves money.

2) Electronic Data Distribution: Beginning in January 2005, the Division implemented a process to electronically transmit docket notices to parties. The electronic transmission of docket notice settings ensures a safe, secure, and quick way for attorneys and insurance companies to receive notices of settings. Since the inception of the process, the Division has sent out a total of 614,634 docket notices by electronic mail. In 2008, 164,492 docket notices were sent out resulting in a savings of \$60,698 for the Division.

3) Web-enabled filing of First Reports of Injury (FROI): insurance companies, third party administrators and Division-approved self-insured employers, can connect directly to the Department of Labor and Industrial Relations' secure server to transmit files and receive acknowledgements. The Division is offering this option to file the FROI that is required by section 287.380 through a secure Web site interface.

4) Medical Fee Disputes: By implementing the administrative ruling process to address disputes in cases where the total reimbursement sought by a health care provider is \$1,000 or less, the Division has conserved judicial resources while still fully preserving parties' rights.

5) AICS System Rebuild: The current computer system that provides the framework for the Division's operations is nearing the end of its life cycle. It has been in operation since 1997 and lacks the ability to support many of the Division's business processes that require extensive computer upgrades. The Division is in the process of analyzing its current operations and how they may be better administered with a new computer system. The General Assembly has endorsed this project, providing initial funding for it in FY09.

6) Release of Security: The Division contracted the services of an actuarial firm to assist in the evaluation of the requests for security release submitted by terminated self-insured employers and group trusts. The Division believes that this will quickly reduce the backlog of pending security release requests.

7) Letter of Credit option: The Division amended the existing regulation to allow a self insured employer or group trust to provide a letter of credit in lieu of a surety bond or escrow deposit to secure their workers' compensation performance.

How to Contact the Division

Missouri Division of Workers'
Compensation
(Central Office)
P.O. Box 58
Jefferson City, MO 65102-0058
573-751-4231
Internet Home Page: www.dolir.mo.gov/wc

Employee Toll Free Information Line:
800-775-2667

Employer Toll Free Information Line:
800-837-6069

Dispute Management Unit
P.O. Box 58
Jefferson City, MO 65102-0058
573-526-4951

Insurance Unit
P.O. Box 58
Jefferson City, MO 65102-0058
573-526-6004

Benefits Unit –
Rehabilitation, and Second Injury Fund
P.O. Box 58
Jefferson City, MO 65102-0058
573-526-3505

Fraud and Noncompliance Unit
P.O. Box 1009
Jefferson City, MO 65102-1009
800-592-6003

Medical Fee Disputes and Religious
Exceptions
P.O. Box 58
Jefferson City, MO 65102-0058
573-526-5610 or 573-522-2546

Local Office Directory

Cape Girardeau

Phone: 573-290-5757 - Fax: 573-290-5760
3102 Blattner, Suite 101
Cape Girardeau, MO 63701

Jefferson City

Phone: 573/751-4231 - Fax: 573-751-2012
3315 West Truman Blvd.
PO Box 58
Jefferson City, MO 65102

Joplin

Phone: 417-629-3032 - Fax: 417-629-3035
3311 Texas Ave.
Joplin, MO 64801

Kansas City

Phone: 816-889-2481 - Fax: 816-889-2489
1410 Genessee St., Suite 210
Kansas City, MO 64102-1047

Springfield

Phone: 417-888-4100 - Fax: 417-888-4105
1736 E. Sunshine, Suite 610
Springfield, MO 65804

St. Charles

Phone: 636/940-3326 - Fax: 636/940-3331
3737 Harry S. Truman Blvd.
St. Charles, MO 63301

St. Joseph

Phone: 816-387-2275 - Fax: 816-387-2279
525 Jules St.
St. Joseph, MO 64501

St. Louis

Phone: 314-340-6865 - Fax: 314-340-6915
111 North 7th St., Room 250.
St. Louis, MO 63101